No. 226

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In the Supreme Court of the United States

OCTOBER TERM, 1969

BERNARD V. SUSSMAN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES

Petitioner was convicted by a jury in the United States District Court for the District of Maryland on a charge that he received, concealed and facilitated the transportation and concealment of a quantity of opium, with knowledge that the opium had been illegally imported into the United States, in violation of 21 U.S.C. 174. He was sentenced to imprisonment for five years. The court of appeals affirmed (Pet. App. A).

The evidence relating to the search and seizure is not presently in dispute.[1] Petitioner resided in the first floor apartment of a two family house in Baltimore. On August 23, 1967, a search warrant was issued for the premises. This warrant recited that the agents had reason to believe that narcotics were contained on the premises "specifically the first floor and basement", and authorized a search of the premises. That same day, federal agents arrested petitioner in the basement of the dwelling and found a vial therein which contained narcotics (II R. 33). As they were bringing petitioner upstairs to his apartment, the agents found a bag containing raw heroin outside of, and about a foot from, the door to petitioner's apartment on the stairway leading up to the second floor (II R. 53, 48-49, 60, 61-62). Additional amounts of narcotics were found in the kitchen (II R. 50).

1. The court of appeals properly rejected petitioner's claim that the seizure of the opium in the hallway violated his Fourth Amendment rights. The agents who were rightfully on the premises to execute the search warrant were clearly entitled to seize narcotics which they found on the common stairway only a foot away from the door to petitioner's apartment.

2. The remaining issue raised in this case—the validity of the statutory inference contained in 21

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[1] The hearing on the pretrial motion to suppress is contained in volume 2 of the 8 volume record on file with the Clerk of this Court.

U.S.C. 174,—is presently before the Court in *Turner* v. *United States*, No. 190, this Term. Accordingly, the Court may wish to defer passing upon the instant petition until after it decides *Turner*.

Respectfully submitted,

ERWIN N. GRISWOLD,
Solicitor General.

JULY 1969.

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